

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DREW HERIOT and
DREW PICTURES PTY LTD.,

Plaintiffs,

vs.

RHONDA BYRNE, THE SECRET LLC
(AKA TS HOLDINGS LLC), PRIME TIME
US INC., TS PRODUCTION HOLDINGS
LLC, TS PRODUCTION LLC,
TS MERCHANDISING LTD., and
ROBERT E. RAINONE, JR.,

Defendants.

Civil Case No. 08CV2272

The Honorable Suzanne B. Conlon

**DECLARATION OF JOSEPH A. MECKES IN SUPPORT OF
MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY PROCEEDINGS**

David S. Elkins
Joseph A. Meckes
Joseph P. Grasser
SQUIRE, SANDERS & DEMPSEY L.L.P.
600 Hansen Way
Palo Alto, CA 94304-1043
Telephone: (650) 856-6500
Facsimile: (650) 843-8777

Jack J. Carriglio
James G. Argionis
MECKLER BULGER & TILSON
123 North Wacker Drive, Suite 1800
Chicago, IL 60606
Telephone: (312) 474-7900
Facsimile: (312) 474-7898

Attorneys for Defendants
RHONDA BYRNE, TS RER LLC
(erroneously named as "THE SECRET LLC"
and "TS HOLDINGS LLC"), PRIME TIME
US INC., TS PRODUCTION HOLDINGS
LLC, TS PRODUCTION LLC,
TS MERCHANDISING LTD., and
ROBERT E. RAINONE, JR.

I, Joseph A. Meckes, declare as follows:

1. I am an attorney admitted to practice in the Northern District of Illinois as well as in the State of California, the United States Supreme Court and several other federal district and appellate courts in California and across the country. I am a partner in the law firm of Squire, Sanders & Dempsey L.L.P. I am one of the attorneys of record for the Defendants this action. The matters set forth below are within my personal knowledge, and if called upon as a witness, I could and would testify competently thereto.

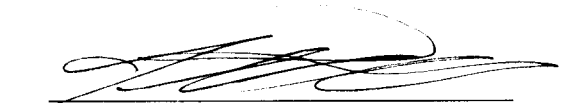
2. Attached hereto as Exhibit A is a true and correct copy of the U.S. District Court - Judicial Caseload Profile prepared by the Administrative Office of the Courts (*available at* <http://www.uscourts.gov/cgi-bin/cmsd2007.pl>). According to these statistics, in 2007, there was an average of 368 actions per judgeship.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the Federal Court of Australia 2006-2007 Annual Report ("Australia Annual Report"). At page 89, the Australia Annual Report states that there were 3,212 "current" cases in the Australian Federal Court in 2006-2007. According to the Federal Court of Australia's website (http://www.fedcourt.gov.au/aboutct/jj_alpha.html), there are 49 federal judgeships in Australia. Combining these two statistics shows that there is an average of approximately 65 cases per judge in the Australian Federal Court.

4. Attached hereto as Exhibit C is a true and correct copy of "U.S. District Courts. Civil Cases Pending by Length of Time Pending," (*available at* <http://www.uscourts.gov/judicialfactsfigures/2006/Table411.pdf>).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 3, 2008 in San Francisco, California.


Joseph A. Meckes

CERTIFICATE OF SERVICE

Under penalties as provided by law, the undersigned, an attorney, hereby certifies and states that he caused a true and accurate copies of the following accompanying documents:

- *Defendants' Notice of Motion;*
- *Defendants' Motion to Dismiss or, in the Alternative, to Stay Proceedings;*
- *Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss or, in the Alternative, to Stay Proceedings;*
- *Declaration of Rhonda Byrne in Support of Motion to Dismiss or, in the Alternative, to Stay Proceedings;*
- *Declaration of Paul Harrington in Support of Motion to Dismiss or, in the Alternative, to Stay Proceedings;*
- *Declaration of Joseph A. Meckes in Support of Motion to Dismiss or, in the Alternative, to Stay Proceedings;*
- *Declaration of Robert E. Rainone, Jr. in Support of Motion to Dismiss or, in the Alternative, to Stay Proceedings; and*
- *Declaration of Donald J. Zyck in Support of Motion to Dismiss or, in the Alternative, to Stay Proceedings*

to be served upon the counsel listed below via the United States District Court for the Northern District of Illinois, Eastern Division's CM/ECF electronic filing system and by electronic mail on this 4th day of June, 2008.

Paul L. Price
(plp@heplerbroom.com)
Hepler, Broom, MacDonald, Hebrank, True &
Noce, LLC
150 N. Wacker Drive, Suite 3100
Chicago, Illinois 60606

Mark S. Werbner
(mwerbner@swtriallaw.com)
Darren P. Nicholson
(dnicholson@swtriallaw.com)
Sayles | Werbner, P.C.
4400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

By /s/ David S. Elkins

MECKES DECLARATION EXHIBIT A

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30							
ILLINOIS NORTHERN				2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*			8,422	8,093	9,056	10,584	11,126	11,135	U.S.	Circuit
	Terminations			7,929	8,255	8,805	11,461	10,888	10,709		
	Pending			8,091	7,711	7,914	7,706	8,699	8,587		
	% Change in Total Filings	Over Last Year		4.1						27	2
		Over Earlier Years			-7.0	-20.4	-24.3	-24.4	81	6	
Number of Judgeships				22	22	22	22	22	22		
Vacant Judgeship Months**				15.8	5.7	12.0	9.6	22.1	17.8		
ACTIONS PER JUDGESHIP	FILINGS	Total	382	367	412	481	505	506	62	4	
		Civil	346	330	369	437	461	459	36	3	
		Criminal Felony	24	26	34	32	38	39	93	7	
		Supervised Release Hearings**	12	11	9	12	6	8	77	6	
	Pending Cases		368	351	360	350	395	390	48	3	
	Weighted Filings**		462	443	485	512	526	525	39	3	
	Terminations		360	375	400	521	495	487	66	5	
	Trials Completed		11	11	13	12	12	14	86	6	
	MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	14.7	13.9	12.9	10.3	9.9	10.3	90	7
Civil**			6.2	6.5	6.9	5.9	5.5	5.5	7	2	
From Filing to Trial** (Civil Only)		29.7	26.4	27.0	28.4	26.0	26.0	65	5		
OTHER	Civil Cases Over 3 Years Old**	Number	456	500	388	337	442	461			
		Percentage	6.5	7.4	5.6	5.0	5.6	6.0	65	6	
	Average Number of Felony Defendants Filed Per Case		1.7	1.8	1.9	1.9	1.7	1.7			
	Jurors	Avg. Present for Jury Selection	45.20	45.07	51.46	39.36	45.57	43.63			
		Percent Not Selected or Challenged	31.8	30.9	36.9	31.0	37.3	34.8			

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	7620	118	150	701	53	55	1504	902	563	428	1614	23	1509
Criminal*	527	1	152	59	43	107	80	13	6	17	11	11	27

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

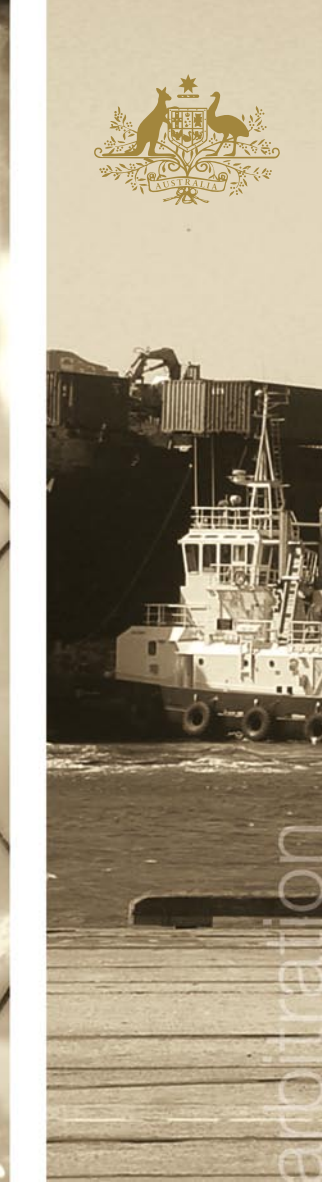
** See ["Explanation of Selected Terms."](#)

MECKES DECLARATION EXHIBIT B



ANNUAL REPORT 2006-2007

FEDERAL COURT OF AUSTRALIA



On 19 September 2006, the Court signed a Memorandum of Understanding (MOU) with the Association of Australian Ports and Marine Authorities Incorporated ('AAPMA'), the peak body representing the interests of ports and marine authorities in Australia. The MOU was signed between the Hon Chief Justice Michael Black AC of the Court and the AAPMA Executive Director, Mr John Hirst.

FEDERAL COURT
OF AUSTRALIA
2006-2007
ANNUAL REPORT

The cover of this year's annual report highlights the Court's admiralty and maritime jurisdiction, which is an important area of the Court's work. The Court's role in this area often requires the arrest or sale of vessels. This involves working with a range of local, national and international authorities. In recent years the Court has focussed on the national management of this work and enhancing its procedures through new Admiralty Rules, communication with practitioners and litigants and work with the Government on legislative issues.

In 2006–07 there were also a number of significant events, including the signing of the MOU with the Association of Australian Ports and Marine Authorities Incorporated, which sets out areas of mutual interest and assistance and underpins a number of initiatives to strengthen the relationship between the Court's Marshals and port authorities in each State and Territory. The Court also welcomed the Attorney-General's announcement in April 2007 of the establishment of the Australian Maritime and Transport Arbitration Commission.



FEDERAL COURT
OF AUSTRALIA
2006–2007
ANNUAL REPORT

© Commonwealth of Australia 2007

Annual Report: Federal Court of Australia

ISSN 1035-5863 (print version)

ISSN 1835-1565 (online version)

This work is copyright. Apart from any use as permitted by the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth available from AusInfo. Requests and inquiries concerning reproduction and rights should be directed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.



CHIEF JUSTICE'S CHAMBERS
FEDERAL COURT OF AUSTRALIA
305 WILLIAM STREET
MELBOURNE VIC 3000

17 September 2007

The Honourable Philip Ruddock MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

I have the pleasure in submitting, in accordance with section 18S of the *Federal Court of Australia Act 1976*, a report of the management of the administrative affairs of the Court during the financial year 2006-2007 and the financial statements in respect of that financial year. The report also includes information about the Court, its composition, jurisdiction and workload.

This is the Court's eighteenth annual report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Black'.

MEJ BLACK
Chief Justice

CONTENTS

1 Overview of the Federal Court of Australia

Establishment	2
Functions and Powers	2
Objectives	2
The Court’s Outcome and Output Structure	2
The Court	3
Judges	3
Appointments and retirements	6
Registries	7

2 The Year in Review

Significant Issues and Developments	10
The Court's Performance	12

3 The Work of the Court in 2006-07

Management of cases and deciding disputes	14
The Court's jurisdiction	15
Workload of the Federal Court and Federal Magistrates Court	17
The workload of the Court in its original jurisdiction	19
The Court's appellate jurisdiction	20
Migration appeals	22
The Court's native title jurisdiction	23
Assisted dispute resolution	26
Management of cases and deciding disputes by Tribunals	27
Improving access to the Court and contributing to the Australian Legal System	28
Practice and procedure reforms	28
Assistance for self represented litigants	29
Public information	30
Community relations	31
Complaints about the Court's processes	32
Involvement in legal education programs and legal reform activities	32
Work with International Jurisdictions	33
Asia Pacific Judicial Reform Forum	33
China: Supreme People's Court	33
Indonesia–Australia Legal Development Facility	33
Pacific Judicial Development Program	34
Tonga: Pacific Governance Support Program	34
Vietnam: Benchbook revision	34
Visitors to the Court	34

4 Management of the Court

Judges' committees	36
Judges' meetings	36
Corporate Services	37
Financial management	37
Audit and risk management	38
External scrutiny	38
Purchasing	38
Consultants	39
Technology services	39
Human Resources	41
Occupational Health and Safety	45
Property management	46
Library and information services	48

Appendices

appendix 1	Financial statements	50
appendix 2	Management Structure	83
appendix 3	Registrars of the Court	84
appendix 4	Statues of the Court	86
appendix 5	Workload Statistics	89
appendix 6	Work of Tribunals	104
appendix 7	Decisions of Interest	108
appendix 8	Judges' participation in legal reform activities and international committees and conferences in 2006-07	120
appendix 9	Equal Employment Opportunity Statistics	128
appendix 10	Expenditure on consultants	129
appendix 11	Statement under Section 8 of the Freedom of Information Act 1982	130
index		132
glossary		134



CHAPTER 1

Overview of the Federal Court of Australia

1.1 Establishment

The Federal Court of Australia, created by the *Federal Court of Australia Act 1976*, began to exercise its jurisdiction on 1 February 1977. It assumed jurisdiction formerly exercised in part by the High Court of Australia and the whole jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy.

The Court is a superior court of record and a court of law and equity. It sits in all capital cities and elsewhere in Australia from time to time.

1.2 Functions and powers

The Court's original jurisdiction is conferred by over 150 statutes of the Parliament. A list of these Acts appears in Appendix 4 on page 86.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court, and from the Federal Magistrates Court in non-family law matters. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's jurisdiction is described more fully in Chapter 3.

1.3 Objectives

The objectives of the Court are to:

- decide disputes according to law – promptly, courteously and effectively and, in so doing, to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfil the role of a court exercising the judicial power of the Commonwealth under the Constitution;
- provide an effective registry service to the community; and
- manage the resources allotted by Parliament efficiently.

1.4 The Court's outcome and output structure

The Court's outcome and output structure appears in Chapter 4 on page 38.

This report uses the outcome and output structure to outline the Court's work and performance during 2006–07. Chapter 3 reports on these issues in detail.

CHAPTER 2

The year in review

2.3 The Court's Performance

Workload

During the year there were 5,063 actions commenced in the Court and 12,740 in the general federal law jurisdiction – the combined workload of the Federal Court and the Federal Magistrates Court. The Federal Court's registries provide registry services for the Federal Magistrates Court. This work has continued to grow since 2000, when the Federal Magistrates Court was established. In 1999–2000 the combined filings in the Federal Magistrates Court and the original jurisdiction of the Federal Court were 5,885, compared with 11,220 this year.

Migration appeals

Migration Act matters form a substantial and increasing proportion of the Court's appellate jurisdiction. In 2006–07, 71.84% of appeals and related actions concerned decisions under the Migration Act. This has increased from 56.4% in 2000–01. The Court has introduced a number of procedures to streamline the preparation and conduct of these appeals and applications, most of which are heard by a single judge rather than a Full Court. This is discussed in more detail in Chapter 3. It is important to note that rather than seeking additional judicial resources, the Court has implemented structural and procedural changes to facilitate the expeditious management of the migration workload.

Performance against time standards

The Court has two time goals for the performance of its work: the first goal concerns the time taken from filing a case to completion; the second goal concerns the time taken to deliver reserved judgments. The time goals assist the Court in managing its work to achieve the performance criteria. They do not determine how long all cases will take as some are very long and complex and others will, necessarily, be very short.

Time Goal 1: 85% of cases completed within 18 months of commencement

During the reporting year, the Court completed 92.2% of cases in less than eighteen months, compared with 91.1% in the previous year. As shown in Figure 5.5 in Appendix 5 on page 94, over the last four years the Court has consistently exceeded its benchmark of 85%.

Time Goal 2: Judgments to be delivered within three months

The Court has a goal of delivering reserved judgments within a period of three months. Success in meeting this goal depends upon the complexity of the case and the pressure of other business upon the Court. During 2006–07 the Court handed down 2,161 judgments. While the Court's reporting system for these statistics is still being refined, initial data indicates that 96.1% of appeals (both full court and single judge) were delivered within three months and 81% of judgments at first instance were delivered within three months of the date of being reserved.

APPENDIX 5 – Workload statistics

The statistics in this appendix provide comparative historical information on the work of the Court, including in certain areas of the Court's jurisdiction.

When considering the statistics it is important to note that matters vary according to the nature and complexity of the issues in dispute.

It should also be noted that, in this report, the figures reported may be marginally different from figures reported in previous years. The variations have occurred through refinements or enhancements to the Casetrack database which necessitated the checking or verification and possible variation of data previously entered.

Casetrack also records matters differently to the Court's previous system, FEDCAMS, with the effect that the Court's reports since 2004–05 have reported different figures for earlier years from those reported in those years. Casetrack records matters in the Court classified according to eleven main categories, described as 'causes of action' (COA).

It should also be noted that following publication of the 2005–06 Annual Report discrepancies were discovered in those charts in Appendix 5 relating to the age and number of current matters. While the total figures were correct, the figures for the individual years were incorrect. The error was caused because both financial and calendar year statistics were incorrectly used to generate this data.

Table 5.1 – Summary of workload statistics

Original and appellate jurisdiction

Filings of major COAs including appeals and related actions					
National totals by financial year					
Year	2002–03	2003–04	2004–05	2005–06	2006–07
Cause of Action					
Total COAs (inc. Appeals & Related Actions)					
Filed	4846	6017	4494	6158	5063
Finalised	5255	6084	4496	6253	5338
Current	3651	3584	3582	3487	3212
Corporations (inc. Appeals & Related Actions)					
Filed	468	645	1003	2912	1926
Finalised	439	558	792	2729	2083
Current	187	274	485	668	511
Bankruptcy (inc. Appeals & Related Actions)					
Filed	540	495	417	392	281
Finalised	573	525	393	419	343
Current	223	193	217	190	128
Native Title (inc. Appeals & Related Actions)					
Filed	71	78	61	68	66
Finalised	61	68	101	96	89
Current	675	685	645	617	596
Total COAs (inc. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	3767	4799	3013	2786	2790
Finalised	4182	4933	3210	3009	2823
Current	2566	2432	2235	2012	1977

Table 5.2 – Summary of workload statistics

(excluding appeals and related actions)

Filings of major COAs (excluding appeals & related actions)

National totals by financial year

Year	2002–03	2003–04	2004–05	2005–06	2006–07
Cause of Action					
Total COAs (ex. Appeals & Related Actions)					
Filed	4139	5114	3114	4827	3543
Finalised	4560	5248	3255	4887	3808
Current	3278	3144	3003	2943	2678
Corporations (ex. Appeals & Related Actions)					
Filed	466	635	984	2898	1903
Finalised	435	549	779	2719	2058
Current	179	265	470	649	494
Bankruptcy (ex. Appeals & Related Actions)					
Filed	485	448	348	332	223
Finalised	525	470	333	354	289
Current	180	158	173	151	85
Native Title (ex. Appeals & Related Actions)					
Filed	68	54	51	60	50
Finalised	58	61	79	81	76
Current	662	655	627	606	580
Total COAs (ex. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	3120	3977	1731	1537	1367
Finalised	3542	4168	2064	1733	1408
Current	2257	2066	1733	1537	1519

Table 5.3 – Summary of workload statistics

Appeals and related actions only

Filings of appeals and relation actions					
National totals by financial year					
Year	2002–03	2003–04	2004–05	2005–06	2006–07
Cause of Action					
Total Appeals & Related Actions					
Filed	707	903	1380	1331	1520
Finalised	695	836	1241	1366	1530
Current	373	440	579	544	534
Corporations Appeals & Related Actions					
Filed	2	10	19	14	37
Finalised	4	9	13	10	37
Current	6	7	13	17	17
Migration Appeals & Related Actions					
Filed	201	375	971	1050	1092
Finalised	179	435	659	1051	1124
Current	112	52	364	363	331
Native Title Appeals & Related Actions					
Filed	3	24	10	8	25
Finalised	3	7	22	15	20
Current	13	30	18	11	16
Total Appeals & Related Actions – excluding Corporations, Migration & Native Title Appeals & Related Actions					
Filed	501	494	380	259	366
Finalised	509	385	547	290	349
Current	242	351	184	153	170

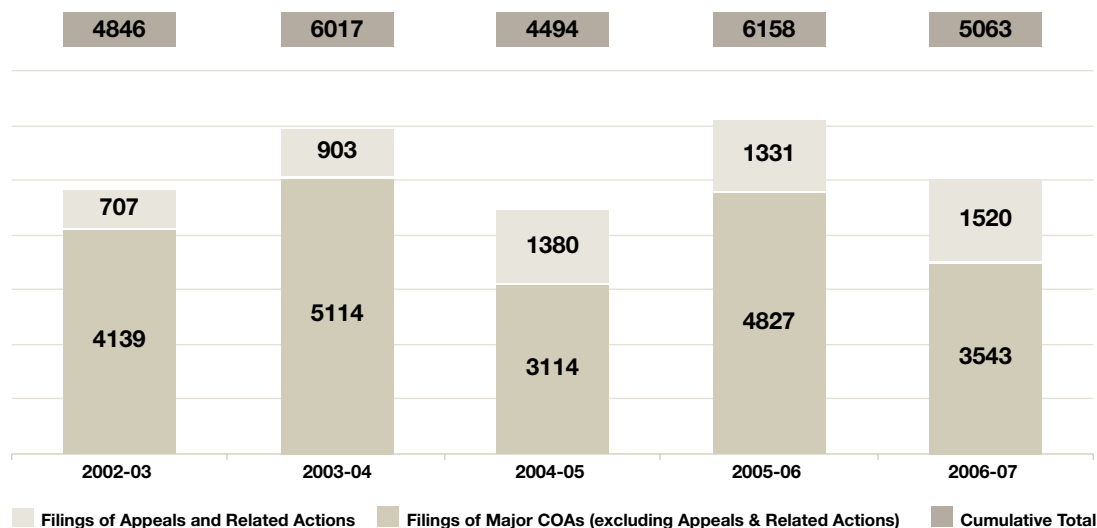
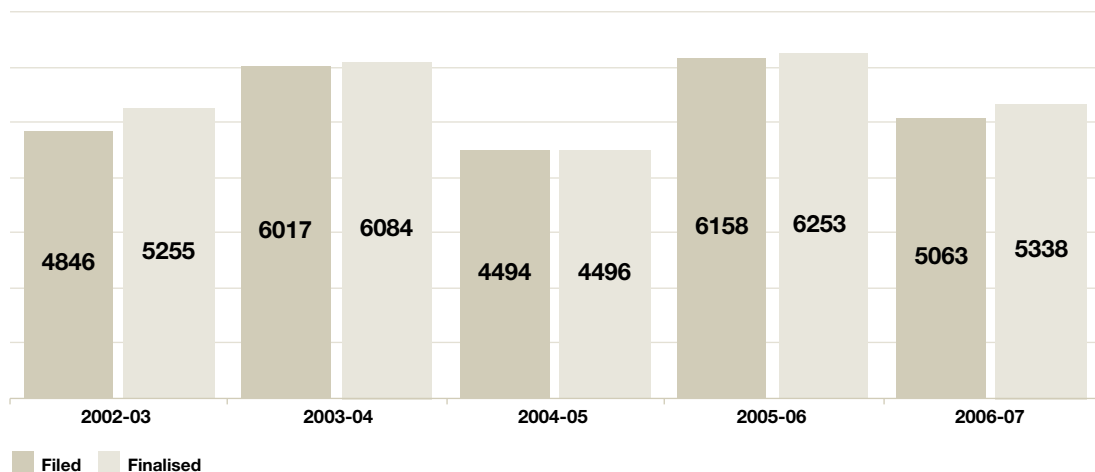
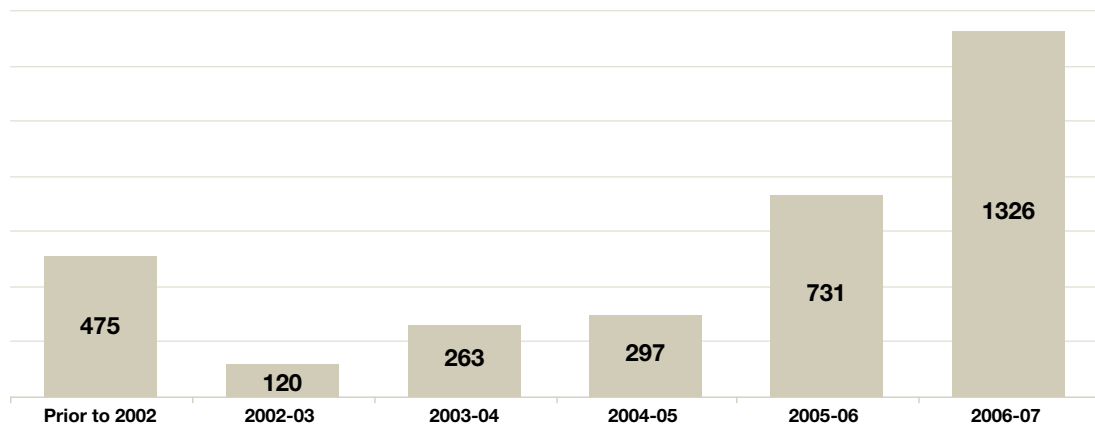
Figure 5.1 – Matters filed 2002–03 to 2006–07

Figure 5.2 – Matters filed and finalised 2002–03 to 2006–07

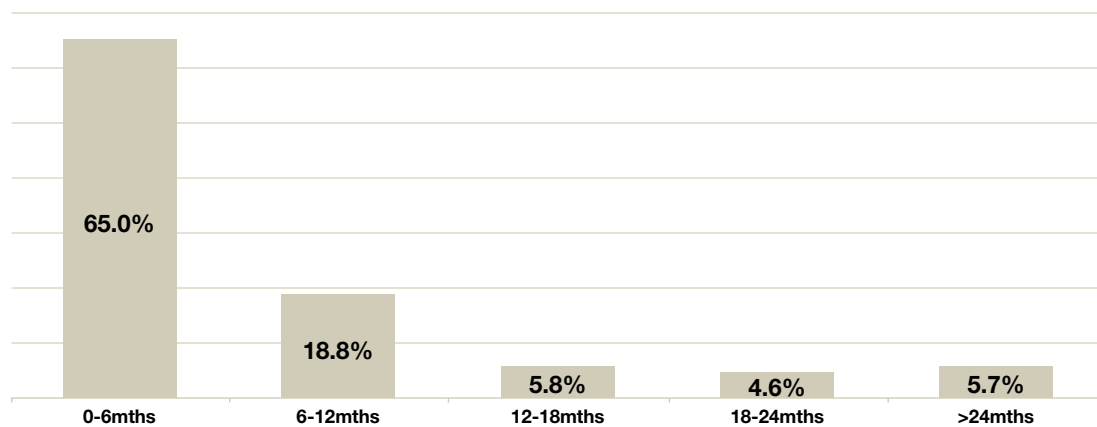
The number finalised refers to those matters finalised in the relevant financial year, regardless of when they were originally filed.

Figure 5.3 – Age and number of current matters at 30 June 2007

A total of 3,212 matters remain current at 30 June 2007. There were 475 applications still current relating to periods before those shown in the graph. Over 90% of cases prior to 2002 are native title matters.

Figure 5.4 – Time span to complete

Matters completed in the period 1 July 2002 to 30 June 2007



A total of 27,011 matters were completed during the 5 year period ended 30 June 2007 excluding Native Title matters. The time span, from filing to disposition of these matters, is shown in the graph above.

MECKES DECLARATION EXHIBIT C

Table 4.11

U.S. District Courts. Civil Cases Pending by Length of Time Pending

Fiscal Year	Total	Length of Time				
		Less Than 1 Year	1 to 2 Years	2 to 3 Years	3 Years or More	
					Number	Percent
1990	242,808	134,550	55,456	27,130	25,672	10.6%
1995	242,274	156,254	51,119	21,363	13,538	5.6%
2000	249,261	153,033	45,651	20,143	30,434	12.2%
2002	265,926	161,727	49,111	20,784	34,304	12.9%
2003	261,065	156,046	49,826	21,126	34,067	13.0%
2004	286,053	177,370	52,303	20,415	35,965	12.6%
2005	266,216	151,485	52,796	22,335	39,600	14.9%
2006	251,832	150,363	50,434	23,458	27,577	11.0%

NOTE: The high number of civil cases pending three years or more results primarily from a significant number of breast implant and oil refinery cases.

Source: Statistical Table C-6